First, Mark Anstey's claim that the Office of the Commonwealth Ombudsman "cannot take any action that would cause an agency to reinvestigate a PID … because the PID Act does not provide a mechanism for a finalised PID investigation to be reopened" is, for the reasons at [30]-[44] of my email of 10 March, as a matter of law, nonsense. Moreover, it took 412 days for Mr Anstey to notify me that *as a matter of law and independent of the facts of my complaint*, since "the PID Act does not provide a mechanism for a finalised PID investigation to be reopened" the Commonwealth Ombudsman "cannot take any action that would cause an agency to reinvestigate a PID", which is, aside from being a legally false statement, simply disgusting so far as timeliness is concerned because, as I explain at [156], that would have been the beginning and end of his investigation.

Indeed, if one were to accept Mark Anstey's demented finding or conclusion, Penny McKay's decision, on 18 March 2022, to investigate the APSC would have been erroneous because, as Mark Anstey claims, *as a matter of law and independent of the facts of my complaint*, since "the PID Act does not provide a mechanism for a finalised PID investigation to be reopened" the Commonwealth Ombudsman "cannot take any action that would cause an agency to reinvestigate a PID." Apparently the acting Commonwealth Ombudsman, a woman with decades of legal experience, wasn't alive to the legal proposition, allegedly found in the *Public Interest Disclosure Act 2013* (Cth), that the Office of the Commonwealth Ombudsman "cannot take any action that would cause an agency to reinvestigate a PID … because the PID Act does not provide a mechanism for a finalised PID investigation to be reopened."

Second, Mr Anstey's claim that no practical outcome could be obtained by further investigation of my complaint of 26 October 2021 is, for the reasons at [45]-[47] of my email of 10 March, nonsense.

Third, Mr Anstey failed to disclose material information (specifically, advice that he secretly solicited from the Australian Public Service Commission and adopted as determinative of the issues before him in relation to the recruitment of Rohan Muscat to fill a National Registrar vacancy) he used to make a decision adverse to my interests. For the reasons elaborated at [48]-[87], which include references to unanimous judgments of the High Court on the applicable law, ***Mark Anstey denied me procedural fairness and***, in the light of the authorities, ***committed a jurisdictional error***.

Fourth, contrary to the *Administrative Review Best Practice Guide 4 – Decision Making: Reasons*, Mark Anstey failed to identify the logically probative evidence, and relevant evidence, upon which he placed reliance when he made his findings, including the finding that "the Agency Head had decided it was appropriate and necessary for some positions to be held at EL2 level and this decision was documented."

Fifth, contrary to the *Administrative Review Best Practice Guide 4 – Decision Making: Reasons*, Mark Anstey failed to assess the evidence that conflicted with Kate McMullan's claim that there had been a "role review" of the SES Band 1 classified National Judicial Registrar & District Registrar roles in Queensland and Victoria, as well as the SES Band 1 classified National Judicial Registrar role, and did not explain why he accepted that there was logically probative, relevant and documented evidence supporting Kate McMullan's claims that there had been "role reviews" even though the evidence overwhelmingly pointed to the fact that no lawful "role review" had occurred.

Sixth, Mark Anstey ***systematically and deliberately ignored the evidence available to him***, especially where that evidence (overwhelmingly) undermined the findings and conclusions drawn by Kate McMullan. Many examples of Mark Anstey deliberately choosing to ignore the evidence before him have been identified in my email of 10 March 2023, including in paragraphs [319]-[324], [325]-[377], [428]-[433], [434]-[484], [628]-[710], [811]-[887], [950]-[1026], [1089] and [1122]. These examples are, of course, not exhaustive.

A simple example will suffice to support my claim. Take the key findings in respect of the allegations of misconduct relating to Murray Belcher's "promotion". Kate McMullan made the following finding (as to which, refer to Annexure EDR – 11: PID Report):

> I found no indication amongst the materials provided that Mr Belcher or Mr Trott were particularly targeted for reclassification of their roles. The evidence provided does not support a finding that this had occurred to create SESB1 positions for Ms O'Connor [amongst others] …
>
> However material provided by FCA also indicates that, following the advertisement of these positions and the finalisation of the recruitment process, a role review was undertaken … The evidence provided indicates that as a result of a role review, a determination was made that NJR positions could be held at the SESB1 level in some registrars, and at the Legal 2 level in other registrars.
>
> The material provided about this review indicates that these decisions were made on the basis of the relative volume and complexity of work undertaken in the various registrars (*sic*).

Despite the fact that there was evidence that:

> a) Murray Belcher was selected for as the recommended candidate for promotion to fill the SES Band 1 classified National Judicial Registrar & District Registrar – QLD vacancy by Sia Lagos, David Pringle and Andrea Jarratt (Annexure EDR-129);
> b) Sia Lagos, as the Agency Head's delegate, endorsed the selection committee's decision to select Murray Belcher for promotion to the SES Band 1 classified National Judicial Registrar & District Registrar – QLD vacancy (Annexure EDR-129);
> c) Sia Lagos, in a document prepared for the attention of Warwick Soden, notified Warwick Soden that Murray Belcher had been selected for promotion to the SES Band 1 classified National Judicial Registrar & District Registrar – QLD vacancy (Annexure EDR-93);
> d) Warwick Soden proposed, on 25 September 2018, to allocate "Legal 2" (i.e. Executive Level 2) classifications to Murray Belcher and Russell Trott, pursuant to ***rule 6*** of the *Public Service Classification Rules 2000* (Cth) (because classifications are allocated to APS employees only under rule 6), so that the Senior Executive Band 1 classifications that Murray Belcher and Russell Trott were entitled to under ***rule 6***, having been selected for SES Band 1 classified roles (classified under ***rule 9*** of the *Public Service Classification Rules 2000* (Cth) because classifications are allocated to groups of duties for roles *only* under rule 9) on their merits, could be transferred to Sydney so that they could be allocated to others (Annexure EDR-93);
> e) Warwick Soden requested that Sia Lagos provide him with a costs reconciliation on 25 September 2018 (Annexure EDR-93);
> f) Warwick Soden told Justice Greenwood, before 30 September 2018, that the SES Band 1 classified National Judicial Registrar & District Registrar – QLD role would be reclassified ***solely*** to avoid the exercise of a putative power of veto that Kerryn Vine-Camp allegedly threatened to exercise to deny Murray Belcher lawful career progression to the Senior Executive Service (Annexure EDR-131);
> g) Sia Lagos prepared a budget reconciliation document (Annexure EDR-95) in which she claimed that Susan O'Connor and Drew Pearson, two people from outside the APS based in Sydney, had been selected as the "successful candidates" for two SES Band 1 National Judicial Registrar roles even though neither Susan O'Connor nor Drew Pearson applied to fill any SES Band 1 roles (Annexure EDR-90), and even though there never was an SES Band 1 classified National Judicial Registrar vacancy notified to the Australian community, and even though both Susan O'Connor and Drew Pearson were listed as candidates who failed to secure the SES Band 2 Senior National Judicial Registrar vacancy (Annexure EDR-93) and, as such, would be offered "new Judicial Registrar - Legal 2" positions in Sydney, with allowances "equivalent to SES1 or higher" (Annexure EDR-93);
> h) on 11 October 2018, Justice Greenwood pulled up Warwick Soden on his deceptive statements about reclassifying the SES Band 1 classified National Judicial Registrar & District Registrar – QLD role would be reclassified ***solely*** to avoid the exercise of a putative power of veto that Kerryn Vine-Camp allegedly threatened to exercise (Annexure EDR-132);
> i) on 12 October 2018, Warwck Soden allocated an SES Band 1 classification to Susan O'Connor pursuant to rule 6 of the *Public Service Classification Rules 2000* (Cth) (Annexure EDR-96), even though Susan O'Connor never applied for an SES Band 1 National Judicial Registrar role and even though such a role was not notified to the Australian community (Annexure OMBR-9 and Annexure OMBR-11);
> j) on 14 October 2018, Justice Greenwood notified Chief Justice Allsop that the real reason that Murray Belcher had been denied lawful career progression to the Senior Executive Service was so that Warwick Soden and Sia Lagos could take the Senior Executive Band 1 classification, which would have been allocated to Murray Belcher, under ***rule 6*** of the *Public Service Classification Rules 2000* (Cth), elsewhere in the organisation so that it could be allocated to another person (as it happens, Susan O'Connor) (Annexure EDR-134);
> k) on 14 October 2018, Justice Greenwood noted that Chief Justice Allsop had stated that what had been done to Murray Belcher was "both unfair and unprincipled" (Annexure EDR-134);

l) on 14 October 2018, Warwick Soden confessed that being caught in his deceptions was keeping him awake (Annexure EDR-134);
m) on 25 October 2018, Kerryn Vine-Camp certified that she had been a full participant in the SES Band 1 classified National Judicial Registrar & District Registrar – QLD selection process and that the process complied with subsection 10A(2) of the *Public Service Act 1999* (Cth) and the *Australian Public Service Commissioner's Directions 2016* (Cth), thus finalising the selection process (Annexure EDR-129); and

that there was not a skerrick of evidence in the records of the APSC that Kate McMullan corresponded or even contacted Chief Justice Allsop, Justice Greenwood, Warwick Soden, David Pringle, Andrea Jarratt, Darrin Moy, Murray Belcher, Russell Trott, Susan O'Connor, or the Australian Public Service Commissioner's representative, Kerryn Vine-Camp (I know for a fact that Kate McMullan did not correspond with these people because freedom of information decision makers in the APSC have conceded the humiliating fact that no such records exist), Mark Anstey concluded that "the key findings were not unreasonable for the Investigating Agency to make." Indeed, Mark Anstey concluded "it was reasonably open to the PID Investigator to conclude there was ***no indication*** that particular applicants were targeted to have the roles they applied for, and to which they were ultimately appointed, reclassified to be suited to those at EL2 level." So the correspondence of a Federal Court judge explicitly noting that the Senior Executive Band 1 classification, which Murray Belcher was entitled to be allocated pursuant to rule 6 of the *Public Service Classification Rules 2000* (Cth), had been taken elsewhere in the organisation so that it could be allocated to another person (as it happens, Susan O'Connor) amounts to "***no indication*** that particular applicants were targeted." And the correspondence of a Federal Court judge, in which he refers to Chief Justice Allsop's comments that what had been done to Murray Belcher was "both unfair and unprincipled", amounts to "***no indication*** that particular applicants were targeted." And all the rest of the evidence indicating that Murray Belcher and Russell Trott were unlawfully denied career progression to the Senior Executive Service? ***No indication***? Only if you ***systematically and deliberately ignore the evidence*** made available to you as part of my complaint dated 26 October 2021.

And then, according to Mark Anstey, there was nothing unreasonable in Kate McMullan finding that "material provided by FCA also indicates that, following the advertisement of these positions and the finalisation of the recruitment process, a role review was undertaken" even though the recruitment process for the SES Band 1 classified National Judicial Registrar & District Registrar – QLD role was finalised on 25 October 2018 and there is not a skerrick of evidence that there was a role review after that date. In fact, as freedom of information decision makers have conceded, there is no documentary evidence that a lawful role review of the SES Band 1 classified National Judicial Registrar & District Registrar – QLD was ever conducted (Annexure OMBR-2 and OMBR-3), despite Ms McMullan's and Mark Anstey's claims that there was, and despite Mark Anstey's conclusion that "the key findings were not unreasonable for the Investigating Agency to make." Go figure.

Seventh, there is no logically probative and relevant documentary evidence that lawful "role reviews" were conducted, even though Mark Anstey claims that "[t]he PID Investigator concluded the material available indicated there had been a role review and the decision to reclassify these positions was made *"on the basis of the relative volume and complexity of work undertaken in the various registrars (sic)"* and that, as such, it was "reasonably open to the PID Investigator to have concluded that there was a review conducted." The fact that there is no logically probative and relevant documentary evidence that lawful "role reviews" were conducted is supported by the many concessions made by freedom of information decision makers in the Federal Court of Australia (see Annexure OMBR-2 to 8), as well as the sheepish concessions of the General Counsel of the Australian Public Service Commission in her submissions to the OAIC (see Annexure OMBR-17).

Eighth, it was never open to Kate McMullan to find that role reviews could be conducted *"**on the basis of the relative volume** and complexity **of work undertaken in the various registrars** (sic)"* because, as I have explained at [107]-[127], as the Australian Public Service Commissioner has explicitly, unambiguously and forcefully instructed in mandatory language:

a) the "appropriate classification of a job should be determined based on the complexity and responsibility of tasks involved, not the number of tasks or how busy the role is";
b) "[w]ork volume may influence the number of employees needed to perform the duties" but "not the number of tasks or how busy the role is"; and
c) "[d]o not classify a job on the basis of the workload or how busy it is."

Thus, it was never open to Mark Anstey to find that it was "reasonably open to the PID Investigator to have concluded that there was a review conducted" because role reviews could be conducted *"**on the basis of the relative volume** and complexity **of work undertaken in the various registrars** (sic)*".

Ninth, for the reasons at [103]-[127] of my email of 10 March, Mr Anstey made selective use of information, including formal policy prescriptions and *advice* that he secretly solicited from the agency he was investigating, to justify preconceived conclusions and findings, and did not address the complaint about the inadequacy of Kate McMullan's PID "investigation" in the light of the totality of evidence and information available to him. Further examples of this selective use of information, including formal policy prescriptions, can be gleaned from [378]-[393], [485]-[500], [711], [888], [1027], [1090] and [1123] of my email of 10 March 2023.

Tenth, as exemplified at [128]-[137] of my email of 10 March, Mark Anstey ignored well articulated grounds of complaint set out in my complaint of 26 October 2021. By way of example, Mark Anstey refused to address Kate McMullan's failure to comply with the ***mandatory statutory obligations*** set out in paragraph 53(5)(b) of the *Public Interest Disclosure Act 2013* (Cth) when she conducted her PID "investigation".

Eleventh, for the reasons at [138]-[143] of my email of 10 March, Mark Anstey failed to apply the ***relevant standards of inquiry***, which apply to investigations under the *Ombudsman Act 1976* (Cth), to his investigation and the reasons in support of his decision to terminate his investigation.

Twelfth, as exemplified at [144]-[154] of my email of 10 March, Mark Anstey's statements as to "reviewability" are logically incoherent. The sheer idiocy of his reasons for decision are manifest on the face of the record of decision dated 12 December 2022.

Thirteenth, with respect to my complaint relating to Kate McMullan's finding pertaining to the promotion of Caitlin Wu, for the reasons elaborated at [182]-[187] of my email of 10 March, Mark Anstey's duty was not to determine whether or not Ms McMullan had turned her mind to the propriety of finding that the "FCA" had failed to "comply with the APS Employment Principles under s 10A(2) of the [Public Service] Act …", but to determine whether it was permissible for Ms McMullan to find that a statutory agency is, as a matter of law, capable of contravening the Code of Conduct – specifically, the duty to at all times behave in a way that upheld the APS Employment Principles – because the statutory agency failed to "comply with the APS Employment Principles under s 10A(2) of the [Public Service] Act."

Fourteenth, for the reasons at [190]-[191], despite being raised as an explicit ground of complaint, Mr Anstey failed to address the adequacy of Ms McMullan's response to the serious finding that amounted to Caitlin Wu not being promoted on the basis of merit. The inadequacy was serious and cannot be dismissed without reason.

Fifteenth, with respect to my complaint relating to Rohan Muscat's engagement, for the reasons at [221]-[232], Mr Anstey's claim that Ms McMullan made a "finding that disclosable conduct did not occur …" is incorrect and, on at least two levels, Ms McMullan's actual finding – "the lack of (sic) essential requirement at the date of application [does not constitute] disclosable conduct with in the meaning of the PID Act" – is nonsense.

Sixteenth, with respect to my complaint relating to Rohan Muscat's engagement, for the reasons at [233]-[247], the Australian Public Service Commission's advice "that an agency can appoint a person in … circumstances if there is a reasonable basis to conclude the person will meet essential criteria for the position within a short period" is not on point, and Mr Anstey's uncritical adoption of the advice is unjustifiable and unlawful in as much as its adoption is affected by jursiditional error.

Seventeenth, with respect to my complaint relating to Rohan Muscat's engagement, for the reasons at [248]-[254], Mr Anstey's concession that "the investigation report does not demonstrate the PID Investigator turned their mind to [the question of favouritism shown to Rohan Muscat]" demonstrates the

inadequacy of Ms McMullan's investigation and, thus, should be cause to ensure that the investigation is completed according to law under the *Ombudsman Act 1976* (Cth).

Eighteenth, with respect to my complaint relating to Rohan Muscat's engagement, for the reasons at [257]-[259], Mr Anstey's failure to address Ms McMullan's failure to investigate the allegation that officials in the Federal Court of Australia Statutory Agency contravened several provisions of the Code of Conduct by withholding material information from Chief Justice Allsop and Chief Judge Alstergren when soliciting instruments is unjustifiable.

Nineteenth, with respect to my complaints relating to Murray Belcher's and Russell Trott's "promotions", and Claire Gitsham's, Matthew Benter's, Phillip Allaway's, Rupert Burns' and Tuan Van Le's engagements, for the reasons at [292]-[301], [425], [625], [808], [947], [1086] and [1119], Mr Anstey's claim that "[t]he APS Classification Guide *recommends* a role review or role evaluation be carried out in certain circumstances …" is a blatant falsehood.

Twentieth, with respect to my complaints relating to Murray Belcher's and Russell Trott's "promotions", and Claire Gitsham's, Matthew Benter's, Phillip Allaway's, Rupert Burns' and Tuan Van Le's engagements, for the reasons at [302]-[314], [426], [626], [809], [948], [1087] and [1120], Mr Anstey's claim that "[c]onducting and documenting a role review is not set down in legislation" is stunted and misinformed because the legal obligation to conduct and document a "role review" is legislatively mandated.

Twenty first, with respect to my complaints relating to Murray Belcher's and Russell Trott's "promotions", and Claire Gitsham's, Matthew Benter's, Phillip Allaway's, Rupert Burns' and Tuan Van Le's engagements, for the reasons at [315]-[318], [427], [627], [810], [949], [1088] and [1121], Mr Anstey's claim that "ultimately it is at the discretion of the Agency Head to determine the duties of an employee and determine an appropriate classification based on those duties" is, as a matter of law, false.

Twenty second, with respect to my complaints relating to Murray Belcher's and Russell Trott's "promotions", and Claire Gitsham's, Matthew Benter's, Phillip Allaway's, Rupert Burns' and Tuan Van Le's engagements, for the reasons at [319]-[324], [428]-[433], [628]-[710], [811]-[887], [950]-[1026], [1089] and [1122], Mr Anstey's claim that "[i]t nevertheless seems reasonably open to the PID Investigator to have concluded that there was a review conducted as the Agency Head had decided it was appropriate and necessary for some positions to be held at EL2 level and this decision was documented" is unjustifiable in the light of the law and the evidence. Indeed, there is no "documented decision" of a role review by the Agency Head of, or anybody else in, the Federal Court of Australia (Annexure OMBR-2 to 8).

Twenty third, with respect to my complaints relating to Murray Belcher's and Russell Trott's "promotions", and Susan O'Connor's engagement, for the reasons at [325]-[377], [434]-[484] and [540]-[591], Mr Anstey's claim that "it was reasonably open to the PID Investigator to conclude there was ***no indication*** that particular applicants were targeted to have the roles they applied for, and to which they were ultimately appointed, reclassified to be suited to those at EL2 level" is unjustifiable in the light of the evidence available to Mr Anstey. Indeed, such a conclusion was reached only because Mark Anstey ***systematically and deliberately ignored the evidence available to him***. That evidence is identified in my email of 10 March in exquisite detail to demonstrate just how wrong Mr Anstey's claim is.

Twenty fourth, with respect to my complaints relating to Murray Belcher's and Russell Trott's "promotions", and Claire Gitsham's, Matthew Benter's, Phillip Allaway's, Rupert Burns' and Tuan Van Le's engagements, for the reasons at [378]-[393], [485]-[500], [711], [888], [1027], [1090] and [1123], the fact that Mr Anstey was unperturbed by Ms McMullan's finding that a "decision to reclassify these positions was made *on the basis of the relative volume* and complexity *of work undertaken in the various registrars (sic)*'" demonstrates a failure on Mr Anstey's part to understand how classification decisions are to be made according to law, and, thus, demonstrates Mr Anstey's incompetence.

Twenty fifth, with respect to my complaints relating to Murray Belcher's and Russell Trott's "promotions", for the reasons at [394]-[395] and [501]-[502], Mr Anstey's failure to address Ms McMullan's failure to investigate the allegation that officials in the Federal Court of Australia Statutory Agency contravened several provisions of the Code of Conduct when they conspired to deny candidates, who had been selected for promotion on their merits, by a selection committee, to the Senior Executive Service of the Australian Public Service so that the scarce Senior Executive Band 1 classification could be allocated to others in Sydney (Susan O'Connor and Drew Pearson) under rule 6 of the *Public Service Classification Rules 2000* (Cth) is unjustifiable given that the complaints constituted the crux of my complaints relating to Murray Belcher's and Russell Trott's "promotions".

Twenty sixth, with respect to my complaints relating to Murray Belcher's "promotion", for the reasons at [396]-[399], it was unacceptable for Mr Anstey to terminate his investigation into Ms McMullan's failure to address the allegation that officials in the Federal Court of Australia Statutory Agency contravened several provisions of the Code of Conduct by misleading a Federal Court judge about the selection process pertaining to the Senior Executive Band 1 classified National Judicial Registrar & District Registrar role in the Queensland District Registry without providing adequate reasons as to why Ms McMullan's failure to investigate the allegation was, in Mr Anstey's confused and ill-informed opinion, permissible in law.

Twenty seventh, with respect to my complaints relating to Susan O'Connor's engagement, for the reasons at [528]-[539], it was unacceptable for Mr Anstey to fail to address the fact that Ms McMullan's investigation was manifestly inadequate given that Ms McMullan had found that "[m]aterials provided by the FCA including gazettal information and selection reports, indicated that [the process to select Ms O'Connor to fill a Senior Executive Band 1 classified National Judicial Registrar role] was a process properly undertaken, and the appointment properly made", even though Mr Anstey conceded that he could not "confirm the PID Investigator identified and considered if there had been a failure to advertise in NSW for the SES1 appointment that was subsequently made in NSW."

Twenty eighth, with respect to my complaints relating to Claire Gitsham's and Matthew Benter's engagements, for the reasons at [712]-[724] and [889]-[902], Mr Anstey's claim that "it was reasonably open to the PID Investigator to not make a finding of disclosable conduct relating to the decision and decision-making process that led to appointing these individuals to positions at EL2 level … because it appears that relevant individuals were already employed by the agency at EL2 level" is unjustifiable because it is, in the light of the evidence, a false statement.

Twenty ninth, with respect to my complaints relating to Claire Gitsham's, Matthew Benter's, Phillip Allaway's, Rupert Burns' and Tuan Van Le's engagements, for the reasons at [725]-[737], [903], [1028], [1091], [1124], Mr Anstey's claims about the "SES cap" are, in the light of the evidence available to him, Executive policy and statute, misinformed and erroneous.

Thirtieth, with respect to my complaints relating to Claire Gitsham's, Matthew Benter's, Phillip Allaway's, Rupert Burns' and Tuan Van Le's engagements, for the reasons at [738]-[762], [904]-[913], [1029]-[1053], [1092]-[1096] and [1125]-[1129], Mr Anstey's claim that "[s]ections 25 and 26 of the *Public Service Act 1999* and section 46 of the Australian Public Service Commissioner's Directions 2022 allow for a person to be moved 'at level' or to be assigned different duties, i.e. a different role, at level" is irrelevant and, as a matter of law, incorrect.

Thirty first, with respect to my complaints relating to Claire Gitsham's, Matthew Benter's, Phillip Allaway's, Rupert Burns' and Tuan Van Le's engagements, for the reasons at [763]-[773], [914]-[925], [1054]-[1064], [1097] and [1130], Mr Anstey's failure to address Ms McMullan's failure to investigate the allegation that officials in the Federal Court of Australia Statutory Agency contravened several provisions of the Code of Conduct when they engaged these named officials to fill Executive Level 2 roles for which there had been no role evaluation, and for which there was no merit based selection process, was entirely unjustifiable, particularly in the light of how crucial those complaints were.

Would you like me to point to further errors of law and/or errors of fact, or will this suffice?